



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0363]

RIN 1625-AA87

Security Zone, Delaware River, Schuylkill River; Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing temporary security zones in the waters of the Delaware River, Schuylkill River, and Darby Creek, in Philadelphia, PA. These temporary zones are intended to restrict vessels from portions of the Delaware River, Schuylkill River, and Darby Creek during the Democratic National Convention from July 25, 2016, to July 29, 2016. During the enforcement period, no unauthorized vessels or people will be permitted to enter or move within the security zone without permission from the Captain of the Port or his designated representative. This security zone is necessary to provide security for the Democratic National Convention.

DATES: This rule is effective from 11:00 a.m. on July 25, 2016, to 1:00 a.m. on July 29, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0363 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215)271-4851, e-mail Tom.J.Simkins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for the Democratic National Convention were not known until July 12, 2016. Delaying the effective date by first publishing an NPRM and holding a comment period would be contrary to the rule’s objectives of ensuring safety of life on the navigable waters and protection of the Democratic Nation Convention and the accompanying high-ranking government officials.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal

Register.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that these temporary security zones are necessary to provide for the security of the Democratic Nation Convention and the accompanying high-ranking government officials, and to protect against sabotage or terrorist attacks to human life, vessels, mariners, and waterfront facilities at or near this event.

IV. Discussion of the Rule

The Democratic National Convention will take place in Philadelphia, PA from July 25, 2016 until July 29, 2016. During this event many high-ranking government officials will be arriving in Philadelphia, PA. The Coast Guard is establishing several security zones in portions of the Delaware River, Schuylkill River, and Darby Creek in Philadelphia, PA.

The first security zone includes all the waters of the Delaware River from the New Jersey shore line, to the Pennsylvania shore line, beginning at the west end of Little Tinicum Island extending in a Northeasterly direction and ending at the mouth of the Schuylkill River;

The second security zone includes all the waters of the Schuylkill River inside a boundary described as 500 yards south of the I-95 Bridge and ending 500 yards north of the George C. Platt Memorial Bridge.

The third security zone includes all waters of Darby Creek inside a boundary described as originating from 500 yards south of the Conrail Railroad Bridge and ending 100 yards north of the I-95 Bridge.

Access to this security zone will be restricted while the zone is being enforced. Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or his

designated representative may enter or remain in the regulated area. These security zones will be enforced with actual notice by the United States Coast Guard representatives on scene, as well as other methods listed in 33 CFR 165.7.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (Executive Orders) related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the security zone. Vessel traffic will be able to safely transit around this security zone which will impact a small designated area of the Delaware River, Schuylkill River, and Darby Creek in Philadelphia, PA for less than 12 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 identifying the security zone locations and describing the process in which vessels can request permission to transit the security zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves three security zones which will be enforced for less than 12 hours at any one time and includes all the waters of the Delaware River from the New Jersey shore line, to the Pennsylvania shore line, beginning at the west end of Little Tinicum Island extending in a Northeasterly direction and ending at the mouth of the Schuylkill River; all the waters of the Schuylkill River inside a boundary described as 500 yards south of the I-95 bridge and ending 500 yards north of the George C. Platt Memorial Bridge; and all waters of Darby Creek inside a boundary described as 500 yards south of the Darby Creek Railroad Bridge and ending 100 yards north of the I-95 Bridge.

It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety

or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0363 to read as follows:

§ 165.T05-0363 Security Zone; Delaware River, and Schuylkill River; Philadelphia, PA.

- (a) Location. The following areas are security zones:

- (1) The first security zone includes all the waters of the Delaware River from the New Jersey shore line, to the Pennsylvania shore line, beginning at the est end of Little Tinicum Island extending in a Northeasterly direction and ending at the mouth of the Schuylkill River;
- (2) The second security zone includes all the waters of the Schuylkill River inside a boundary described as 500 yards south of the I-95 Bridge and ending 500 yards north of the George C. Platt Memorial Bridge.
- (3) The third security zone includes all waters of Darby Creek inside a boundary described as originating 500 yards south of the Conrail Railroad Bridge and ending 100 yards north of the I-95 Bridge.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel; as well as a Federal, State, and local officer designated by or assisting the Captain of the Port, Delaware Bay in the enforcement of the security zone.

(c) Regulations. (1) Under the general security zone regulations in subpart D of this part, no person or vessel may enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF-FM channel 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period: This rule is effective from 11:00 a.m. on July 25, 2016, to 1:00 a.m. on July 29, 2016.

Dated: July 19, 2016

Benjamin A. Cooper,
Captain, U. S. Coast Guard
Captain of the Port, Delaware Bay
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